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In re Application of
Kouji Arikawa, et al.
Application No. 10/731,599
Filed: December 9, 2003
For: **METHOD AND APPARATUS FOR
OPTICAL HEAD AND OPTICAL
INFORMATION REPRODUCING**

**DECISION ON REQUEST TO
WITHDRAW APPLICATION FROM
ISSUE**

This is a decision on the petition, filed January 24, 2005, to withdraw the above-identified application from issue pursuant to the provisions of 37 C.F.R. §1.313(a).

The petition **Denied**.

Petitioner's reasons for requesting withdraw of the application from issue is such that the Office might consider an IDS submission. The IDS for consideration, after the Notice of Allowance and Fee(s) Due on November 3, 2004.

A review of the application file reveals that a Notice of Allowance was mailed for the above-identified application on November 3, 2004. The IDS was submitted November 23, 2004 and the subject Petition was filed on January 24, 2005. It does not appear as though the Issue fee has paid.

37 C.F.R. §1.313 Withdrawal from issue, states in part:

(a) Applications may be withdrawn from issue for further action at the initiative of the Office or upon petition by the applicant. To request that the Office withdraw an application from issue, applicant must file a petition under this section including the fee set forth in § 1.17(h) and a showing of good and sufficient reasons why withdrawal of the application from issue is necessary. A petition under this section is not required if a request for continued examination under § 1.114 is filed prior to payment of the issue fee. If the Office withdraws the application from issue, the Office will issue a new notice of allowance if the Office again allows the application.

MPEP §609 Information Disclosure Statement, states in part:

III. MINIMUM REQUIREMENTS FOR AN INFORMATION DISCLOSURE STATEMENT

B(3) Information Disclosure Statement Filed After B(2), but Prior to Payment of Issue Fee 37 CFR 1.97(d) An information disclosure statement will be considered by the examiner if filed on or after the mailing date of any of the following: a

final action under 37 CFR 1.113; a notice of allowance under 37 CFR 1.311; or an action that closes prosecution in the application, e.g., an Ex parte Quayle action, but before or simultaneous with payment of the issue fee, provided the statement is accompanied by:

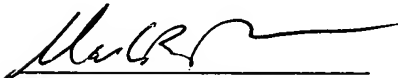
- (A) a statement as specified in 37 CFR 1.97(e) (see the discussion in subsection B(5); and
- (B) the fee set forth in 37 CFR 1.17(p).

Applicants have satisfied the requirement set forth in 37 C.F.R. §1.97(d). However, an application may be removed from the Office of Patent Publication, without it being withdrawn from issue in order to permit the examiner to consider an information disclosure statement or whether one or more claims are unpatentable. Consideration of an IDS is not considered good and sufficient reasons for withdrawing an application from issue.

Accordingly, the petition is **Denied**.

Furthermore, it is noted that the time period for payment of the issue fee has expired and there is no record of receipt of the issue fee within the Office. Failure to have timely filed the issue fee would have rendered the subject application abandoned.

The examiner will consider the IDS submitted on November 23, 2004 and provide a copy of the considered IDS.



Mark Powell, Director
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Communications